THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.1798 of 2006

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Dated:31.01.2006

Between:

Smt. T. Neelavathamma, W/o. Chandra Sekhara Reddy,
R/o. Nandikunta Vill, Kothapalli Madal, Kurnool District.

..... PETITIONER

AND

The Govt of A.P., rep. by its Mdl., Revenue Officer, Kothapalli mdl.,

Kurnool District, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.1798 of 2006

ORDER:

The petitioner is a resident of Nandikunta Village, Kothapalli Mandal, Kurnool District. She is the owner of agricultural land admeasuring Ac.7.40 cents in Survey No.657 of the said Village. She applied to the Mandal Revenue Officer on 07.01.2005 to drill a bore-well, which was accordingly sanctioned on 10.01.2005, presumably, as per the provisions of Section 10(2) of the Andhra Pradesh Water, Land & Trees Act, 2002 (for short 'the Act'). It appears a complaint was made to the Mandal Revenue Officer alleging that the petitioner dug a bore-well within a distance of 199 Meters from another bore-well dug in Survey No.653. On this ground, by impugned proceedings dated 24.01.2006, while cancelling the permission granted on 10.01.2005, the Mandal Revenue Officer directed the Mandal Revenue Inspector and the Panchayat Secretary to seize the bore-well immediately. Aggrieved by the same, the petitioner filed the instant writ petition for redressal.

The learned Counsel for the petitioner relies on Section 38(1) of the Act in support of the contention that before the seizure of the bore-well, even if it is dug illegally,

notice is necessary and that in the absence of any such notice the order is unsustainable. **Opposing** the writ petition, the learned Assistant Government Pleader for Revenue (General) submits that the petitioner has an effective alternative remedy under Section 33 of the Act, and therefore, the writ petition is not maintainable.

Section 10 of the Act deals with permission for sinking well or drinking water source. Subsection (1) thereof prohibits any person from sinking any well within a distance of 250 Meters from the vicinity of a public drinking water source. Subsection (2) requires any person, who intends to sink a well for the purpose of irrigation, to obtain permission from the authority. However, such permission is not required for sinking a drinking water source, unless such drinking water well/bore-well is proposed within the distance as specified in subsection (1) of Section 10 of the Act. Be that as it is, under Section 38(1) of the Act, whenever any property, machinery or device is to be seized on an allegation that an offence under the Act has been committed, a notice has to be issued to the person alleged to have contravened the law. Indeed, Section 15 of the Act and Rule 15 of the Andhra Pradesh Water, Land & Trees Rules, 2002 (for short 'the Rules') also contemplate a prior notice.

Against any order passed by the Mandal authority, Section 33 of the Act provides for an appeal to the District Collector. There are disputed questions of fact involved in this case, and therefore, it would be in the interest of the petitioner to approach the District Collector and file an appeal within a period of one week from the date of receipt of a copy of this order. As and when such appeal is filed, the District Collector, Kurnool, shall entertain the appeal and pass appropriate orders keeping in view the purport of Sections 10, 12 and 15 of the Act and Rules 12, 15 and 16 of the Rules. This exercise may be completed within a period of four weeks from the date of submission of the appeal of the petitioner. In the meanwhile, as the petitioner statedly raised Sunflower crop, which requires constant watering, this Court is of the considered opinion that the petitioner should be permitted to use the water from the bore-well dug in Survey No.657 pursuant to the permission granted by the Mandal Revenue Officer. There shall be a direction accordingly.

The Writ Petition is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

31.01.2006

Note: Issue C.C by 02.02.2006.

B/o.

vs